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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,922	09/19/2001	Eric R. Melzer	M895 .12-0001	9710

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EXAMINER

FRANCIS, FAYE

ART UNIT	PAPER NUMBER
3712	8

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

CS

Office Action Summary	Application No.	Applicant(s)	
	09/955,922	MELZER ET AL.	
	Examiner Faye Francis	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 June 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 11-20 is/are allowed.
- 6) Claim(s) 1,2 and 6-10 is/are rejected.
- 7) Claim(s) 3-5 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 June 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, each leg and arm members have three articulated segments in claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: proper antecedent basis should be provided in the specification for the terms "leg members" and "arm members" in claims 6-11 and 17. Additionally, the proper antecedent basis should be provided in the specification for the requirement in claim 9 that each leg and arm members have three articulated segments. No new matter should be entered into the application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 line 1 "said plurality of magnets" is not proper since at least one magnet previously has been introduced in claim 1 on which claim 3 depends on.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-2, 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Wion.

Smith discloses in Figs 1-6, a character object [doll 16] comprising an artistic layer [paper applique 20], at least one magnet [magnetic body 18] as recited in claim 1.

Smith does not disclose articulation points, pivotal connection, the first and second leg members have at least two articulated members as recited in claim 6, the character object having third and fourth leg members as recited in claim 7, the first and second arm members have at least two articulated segments as recited in claim 8 and a head member as recited in claim 10.

Wion teaches the concept of providing an articulated figure having a plurality of articulation points [Figs 1 and 2], a plurality of appendages pivotally connected to the torso and the first and second leg members have at least two articulated members 16,

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17, 19 and 20, a head member 1 and the first and second arm members have at least two articulated segments. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Smith with the missing elements as taught by Wion in order to enable the figure to be held in any one of a wide variety of desired positions making the toy more fun to play with.

With respect to the character object having third and fourth leg members, Wion reference further recognizes that the character object may also represent an animated object such as a dog [col 3 line 22]. It would have been obvious to provide the device of Smith with the third and fourth leg members as suggested by Wion in order to represent animals such as a dog, a cat or a horse making the toy more fun to play with.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Wion as applied to claims 1-2, 6-8 and 10 above and further in view of McKittrick, Jr. et al, hereinafter McKittrick.

The modified device of Smith would have most of the elements of this claim but for each leg member has at least three articulated segments.

McKittrick teaches the concept of providing an animated object with at least three articulated segments in each of its leg members. It would have been obvious in view of McKittrick to further provide each of the leg members of the animated object of Wion device with least three articulated segments to make the device more realistic and to increase the range of motion.

The further modification of the device of Smith to have at least three articulated segments in each leg member would especially be obvious since the Wion reference

discloses that the character object may also represent an animated object such as an insect [spider].

Allowable Subject Matter

8. Claims 11-20 are allowed.
9. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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Jacob K. Ackun
Primary Examiner